

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 111 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME-TAX

Versus

JITENDRA MAGANLAL DESAI & CO

Appearance:

1. INCOME TAX REFERENCE No. 111 of 1991
MRS MONA BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,
the following question is referred for our opinion for
for assessment year 1983-84:-

"Whether, the Appellate Tribunal is right in law
and on facts in deleting the disallowance of
Rs.14,559/- under Section 40A(3) of the
Income-tax Act?"

2. During the year under consideration, the assessee had purchased goods worth Rs.64,93,204/- from its sister concern M/s. Kishorilal R Desai and had made payment of Rs.60,67,915/- by cheque and of Rs.2,73,000/- in cash. The assessee explained that cash payments had to be made to the Railway department on account of freights and hamali charges. The Income-tax Officer noted that only Rs.2,58,441/- had been so paid. The ITO, therefore, disallowed a sum of Rs.14,559/- by applying Section 40A(3) of the Act and added the same to the total income of the assessee. In appeal to the CIT (Appeals), the assessee further explained that with a view to meet the freight and hamali charges over the goods supplied by the sister concern to the assessee the latter used to advance to the former some money in cash on adhoc basis from time to time. The learned CIT (Appeals) felt satisfied with the explanation offered by the assessee and deleted the disallowance of Rs.14,559/- as had been made by the ITO under Section 40A(3) of the Act. In second appeal brought before the Tribunal at the instance of the revenue, it was held by the Tribunal that the correctness and genuineness of the account of sister concern M/s.Kishorilal R Desai in the books of the assessee was neither disputed nor even doubted by the department. The Tribunal further noted that it was also not disputed that the sister concern used to make payments to the Railways for freight and hamali charges on the consignments made to the assessee. In view of this arrangement between the assessee and its sister concern, the Tribunal held that the former could have advanced cash on adhoc basis to the latter from time to time. In the opinion of the Tribunal, such an advance did not create the relationship of debtor and creditor between the assessee and its sister concern. For these reasons, the Tribunal upheld the order of the CIT (Appeals).

3. We have heard Mrs. Mona Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

4. Mrs Bhatt, learned Standing Counsel for the

revenue submitted that the ITO had rightly allowed only Rs.2,58,441/- as the amount spent for freight and hamali charges as there was no evidence for the balance amount of Rs.14,559/- which was accordingly rightly disallowed by the ITO under Section 40A(3) of the Act read with Rule 6DD of the Income-tax Rules.

5. There is no dispute about the fact that the goods were worth Rs.64,93,204/- and that the assessee had paid a sum of Rs.60,67,915/- to its sister concern M/s.Kishorilal R Desai by cheques and only the amount required to be paid to the Railway department on account of freight and hamali charges i.e. Rs.2,73,000/- was paid in cash through the sister concern who was making arrangements for taking delivery and making payments to the Railways for freight and hamali charges of consignments made to the assessee. Considering the fact that the amount of Rs.2,73,000/- paid by the assessee to the sister concern in cash was duly reflected in the books of account of the said sister concern, the Tribunal held that the expenditure was genuine.

6. Taking an overall view of the matter and considering the amount of value of the goods involved and the amount of freight and hamali charges allowed by the ITO at Rs.2,58,441/-, in our opinion, the sum of Rs.14,559/- allowed by the CIT (Appeals) and confirmed by the Tribunal is comparatively a small amount. In view of the concurrent findings given by the CIT (Appeals) as well as the Tribunal about the reasonableness and genuineness of the expenditure incurred by the assessee through its sister concern, we hold that the Tribunal was right in law and on facts in deleting the disallowance of Rs.14,559/- under Section 40A(3) of the Income-tax Act.

We, accordingly, answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

7. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-